REBECCA S. KNOTT-GRAY

IBLA 88-115 Decided December 7, 1989

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting color-of-title application CA-20284.

Affirmed.

1. Color or Claim of Title: Applications

> A decision rejecting a class 1 color-of-title application will be affirmed where the applicant fails to submit information regarding conveyances of title to the land to the applicant and her predecessors-in-interest and where it is clear, based on information submitted by the applicant on appeal, that there are no documents purporting to grant her title to the land, and that her predecessor-in-interest did not hold the property in good faith.

APPEARANCES: Rebecca S. Knott-Gray, pro se.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Rebecca S. Knott-Gray has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated October 15, 1987, rejecting her color-of-title application (CA-20284).

On July 24, 1987, Knott-Gray filed with BLM a class 1 color-of-title application for 3.81 acres of land situated in lot 20, sec. 32, T. 4 S., R. 4 W., San Bernardino Meridian, Riverside County, California, pursuant to section 1 of the Color-of-Title Act, as amended, 43 U.S.C. § 1068 (1982). In order to establish entitlement to a patent under a class 1 color-oftitle application, an applicant must demonstrate that he or his ancestors or grantors have held the land sought "in good faith and in peaceful, adverse, possession * * * under claim or color of title for more than twenty years, and that valuable improvements have been placed on [the] land or some part thereof has been reduced to cultivation." 43 U.S.C. § 1068 (1982); 43 CFR 2540.0-5(b).

In her application, Knott-Gray stated that she, along with her husband at the time (Robert Knott), had originally leased the land in 1971 with an

option to buy from one Leonard Moe, subsequently purchasing the land from Moe in 1974. 1/ In addition, Knott-Gray asserted that she had made $2,000 in improvements. However, she failed to provide information demonstrating that she or her grantor (Moe) had held the land under claim or color of title. To do so, she would have had to present legal documents (instruments) purporting to show that she or her grantor held title to the land. To accommodate a claimant in making such showing, the back of the application form (Form 2540-1 (November 1984)) reminds an applicant to enclose a "Form 2540-2 showing all conveyances affecting title to lands," as required by 43 CFR 2541.2(c). No such form accompanied Knott-Gray's application. 2/

By decision dated September 10, 1987, BLM required Knott-Gray to com-plete and submit two copies of Form 2540-2 within 30 days of receipt of the decision. BLM enclosed copies of this form for her convenience. Since Knott-Gray, by her own admission, had not resided on the land for 20 years, BLM expressly advised her as follows:

> [I]t must be shown that [Knott-Gray's] grantor held the land in peaceful, adverse possession under a claim or color of title for a period of time, which, when added to the period the land was held by [her] in good faith under claim or color of title prior to the filing of her application, equals the required 20 years or more.

BLM finally stated that, if Knott-Gray did not comply with the demand within the time allowed, a final decision would be issued. No reply was received. 3/

1/ It is not completely clear whether this person was Leonard Moe, Sr., or Leonard Moe, Jr.

2/ Form 2540-2 is entitled "Conveyances Affecting Color or Claim of Title." On the form are spaces for the applicant to list conveyances with respect to the land sought, noting in each case the grantor, the grantee, the date of conveyance, the volume and page where the conveyance document was recorded and any reservations or restrictions affecting the conveyance.

BLM's class 1 color-of-title application form asks the applicant whether he has enclosed the Form 2540-2. In this case, appellant simply checked the box marked "No" following this question. By giving the applicant the option to check either "yes" or "no," the form creates the impression that submitting such form is optional. However, it is evident from other instructions on the form that the filing of Form 2540-2 is required. The applicant is specifically instructed to "[b]e sure that all conveyances and claims of title, both record and nonrecord, are itemized." Departmental regulation 43 CFR 2541.2 requires this information to be filed.

3/ The record indicates that the September 1987 BLM decision was mailed to Knott-Gray by certified mail, return receipt requested. However, the decision was not claimed by Knott-Gray, and, on Oct. 6, 1987, was mailed back to BLM by the U.S. Postal Service (USPS) marked "Unclaimed." The envelope contains a sticker indicating that two attempts at delivery were made by USPS prior to returning it to BLM. It is not clear when BLM received the unclaimed letter back, as it was not date stamped.

In its October 1987 decision, BLM rejected Knott-Gray's color-of-title application because no further action could be taken to process the application to completion in the absence of submission of the required Form 2540-2. The decision was mailed to Knott-Gray at the same address to which the September 1987 decision was sent and was received by her on October 23, 1987. Knott-Gray (appellant) has appealed from this BLM decision.

In her statement of reasons for appeal (SOR), appellant does not challenge the fact that she failed to respond to the September 1987 BLM decision. Nor does she now provide a completed Form 2540-2 or any listing of the conveyances leading up to her acquisition of the subject land. In fact, she admits that "[s]ince I had not resided for the full 20 years as provided for by the Color of Title law, there are no legal reasons which I may cite for you to judge that my appeal should be granted." Rather, appellant merely requests that she be allowed to purchase the land sought in her color-of-title application, asserting that she intends to use the land on which she has resided for 17 years to establish a private Christian art school.

[1] In her application, appellant stated that she and her then husband were not told until 1985 that Moe did not own the subject land which they putatively acquired in 1974. However, even accepting that appellant occupied the land without knowledge of the paramount title of the United States, she has not satisfied the requirements for a valid class 1 colorof-title application.

From the information contained in the record and provided by appellant on appeal, it is apparent that the reason why appellant did not complete Form 2540-2 is simply that there was no conveyance document by which appellant and her then husband purportedly acquired title to the subject land. In her application, appellant related the basis for her color-of-title claim: "We assumed that we owned the land because Leonard Moe Sr., who said he had owned the land before us, sold it to us and had told us that it was

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fn. 3 (continued)

Under 43 CFR 1810.2(b), an offer of delivery by mail which cannot be consummated because delivery is refused meets the requirements for communication by mail where the attempt to deliver is substantiated by post office authorities. That is, the person will be regarded as having received the letter even though it was not actually received by him. However, the date of service of the letter in these circumstances is taken to be the date the letter is returned to BLM. Lite Sabin, 51 IBLA 226, 87 I.D. 610 (1980).

Thus, in the instant case, the time for Knott-Gray to comply did not commence until the date BLM received the letter back as undeliverable, which was some time after Oct. 6, 1987, and BLM technically did not wait a full 30 days to issue its second decision, which went out on Oct. 15, 1987. However, as Knott-Gray has effectively admitted on appeal that she has no documents to file and, thus, cannot comply with BLM's request, there would be no useful purpose in remanding the matter to BLM to allow her additional time to comply. Compare Robert C. LeFaivre, 96 IBLA 26, 28-29 (1986).

now our land as of 1974." A statement provided along with appellant's SOR, signed by Richard Froemke on December 25, 1987, relates details regarding the nature of the lease and purchase transactions:

> I was accompanying [appellant] in December 1971 when she * * * first met Leonard Moe Sr. * * * At that time Leonard accepted $105.00 for 3 months rent/option to buy * * *. He, at a later meeting, this time in the yard out at [appellant's], said the full price was $10,000.00, but that since they had paid already almost $3,000.00 [4/], it was then paid in full and he shook [Robert Knott's] hand * * *. He said to them that the place was theirs.

See also Statement of Terry D. Andrews, Sr., dated December 14, 1987. There is no evidence that there was ever any instrument of conveyance to appellant and her then husband specifically describing the conveyed land. Apparently, Knott-Gray expected to receive a title document from Moe, but was repeatedly put off by him. See Statement of Rebecca French, dated December 24, 1987.

Thus, not only did appellant fail to provide conveyance documents by which claim or color of title originated, as required, it is very doubtful that any exist. It has long been held that a valid class 1 color-of-title application must be supported by a document from a source other than the United States which purports to convey title to the land to the color-of-title applicant or his predecessor-in-interest, thus initiating the required 20-year chain of title. Alvin E. & Mary R. Leukuma, 103 IBLA 302, 305 (1988); Ramona & Boyd Lawson, 94 IBLA 220, 225 (1986); Benton C. Cavin, 41 IBLA 268, 270-71 (1979).

Further, there is no evidence that either appellant or Moe, her putative predecessor-in-interest, occupied the land for any period of time "in good faith and in peaceful adverse possession," such that their combined occupancy could fulfill the 20-year statutory requirement. 43 U.S.C. § 1068 (1982). To the contrary, the evidence suggests that this was not the case. 5/ This itself would be sufficient to defeat appellant's entitlement.

4/ Similarly, appellant states in her SOR at page 2 that she and her then husband paid $3,000. However, in her color-of-title application, appellant stated that the purchase price was $2,000.

5/ Appellant has provided additional information which illuminates the history of putative ownership of the subject land. This information suggests that Leonard Moe's father leased the land from the United States for his life only, without any rights descending to his heirs. According to appel-lant, upon Moe's father's death (which, as appellant recognizes, ended any rights under the lease), Leonard Moe nevertheless apparently purported to rent the land as though he owned it. Specifically, he offered it for lease, with an option to purchase, to Myrtle and Frank Koehn beginning in 1957. The option was evidently never exercised, apparently because the Koehns learned in 1962 or 1963 from BLM that Moe did not own the land. See Statement of Myrtle M. Koehn, dated July 19, 1987. He subsequently offered it for lease and sale to appellant and her husband.

Louis Mark Mannatt, 109 IBLA 100, 103-04 (1989); Hal H. Memmott, 77 IBLA 399, 403 (1983).

In these circumstances, appellant cannot be said to have established that she held the subject land "under claim or color of title," as required by section 1 of the Color-of-Title Act. Accordingly her application was properly rejected.

Appellant requests that she be allowed to purchase the subject land. Such a request should be dealt with by BLM in the first instance, and we have received a copy of correspondence indicating that BLM is aware of her interest in purchasing the land. Accordingly, upon return of the case file, BLM may address appellant's request.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

David L. Hughes
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

fn. 5 (continued)

Appellant has also provided information that the land was included in a mining claim which was quitclaimed to Betty Moe (believed to be Leonard Moe's wife) by Rilla Samson (believed to be Betty Moe's mother and Leonard Moe's mother-in-law) in 1963.

The existence of a mining claim and a lease from the United States would necessarily indicate that the Federal Government owned the lands. Since their existence was well known, it appears likely that Moe and, for that matter, appellant, were aware that paramount title was in the United States.